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June 22, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

Re: AR 626 –Rulemaking Regarding Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-captioned docket are Idaho Power Company's Post-Workshop Comments.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 626

In the Matter of:

Rulemaking Regarding Certificate of Public
Convenience and Necessity.

IDAHO POWER’S POST-WORKSHOP
COMMENTS

I. INTRODUCTION

Idaho Power Company (“Idaho Power” or the “Company”) appreciates the additional discussions between Commissioners and stakeholders at the Public Utility Commission of Oregon’s (“Commission”) April 26, 2022 workshop and rulemaking hearing, as well as the subsequent workshop on June 3, 2022. In response to several of the concerns raised at the hearing and in the workshops, Idaho Power offers this additional round of comments on the draft proposed rules regarding the information requirements and decision criteria for petitions for certificate of public convenience and necessity (“CPCN”) circulated on March 31, 2022 (“March 2022 Proposed Rules”), which are summarized as follows:

- Idaho Power supports the Commission’s proposal to allow petitioners flexibility to pursue land use approvals and a CPCN concurrently, but the current proposed rules suggest that an applicant may do so only if those approvals “cannot be obtained” and the purpose of requiring a “waiver” to do so is not clear;
- Idaho Power supports the proposals that have been made at the workshops to include a Land Use Compatibility Statement (“LUCS”) in lieu of final land use approval, and recommends that they should be used broadly, consistent with the practices of other agencies, rather than only in circumstances where land use approval cannot be obtained;
- The proposal to delay final action on a CPCN until after the Energy Facility Siting Council (“EFSC”) issues a site certificate is unduly restrictive and inconsistent with the Commission’s intent to allow a petitioner to seek a CPCN and land use approvals concurrently;

- Given the narrow role of a CPCN in the extensive permitting process for a transmission line, concerns regarding the siting of a transmission line should be addressed in the land use approval process, not in the CPCN proceedings; and
- Revisions to the Commission’s CPCN rules would not require further certification from the Land Conservation and Development Commission (“LCDC”) because the Commission provided to the Department of Land Conservation and Development (“DLCD”) notice and opportunity for comment regarding the Commission’s proposed rules; moreover, the Commission should reconsider whether a CPCN is a program “affecting land use.”

II. DISCUSSION

A. Idaho Power Requests That the Commission Clarify the Options a Petitioner May Select Regarding the Information Requirements Relating to Land Use Approvals.

Throughout this proceeding, stakeholders have repeatedly raised concerns regarding any “capstone approach” that would prohibit a petitioner from filing a petition for a CPCN, or the Commission from issuing a CPCN, until *after* the petitioner obtained all required land use approvals. While the Commission indicated at the April 26, 2022 hearing its intent to allow flexibility for a petitioner to submit a petition prior to obtaining all necessary land use approvals and for the Commission to issue a CPCN in the absence of such approvals, the March 2022 Proposed Rules do not make that clear.

At the April 26, 2022 hearing, the Administrative Law Judge (“ALJ”) indicated the waiver provision was intended to provide petitioners with three options regarding land use approvals, such that petitioners may: (1) obtain all land use approvals prior to filing and include copies of those approvals with the petition as evidence of compliance with all land use requirements; (2) request a waiver at the time of filing and ask that the Commission consider issuing a CPCN while the petitioner concurrently seeks land use approvals, with the understanding that the petitioner would obtain land use approvals before the Commission issues the CPCN; or (3) if the petitioner does not expect to obtain land use approvals before the Commission issues a CPCN, request that the Commission make its own determination as to whether the proposed transmission line will comply

1 with the Statewide Planning Goals and acknowledged land use plans. However, these three
2 options are not clear in the March 2022 Proposed Rules, because (a) the proposed waiver
3 provision, OAR 860-025-0030(3), does not clearly specify the purpose of the waiver, and
4 (b) proposed OAR 860-025-0030(3)(c) does not contemplate a waiver allowing the Commission
5 to process a petition while the petitioner concurrently seeks land use approvals.

6 To align the proposed rules with the three options set forth above, Idaho Power requests
7 that the Commission revise OAR 860-025-0030(3) to provide context for the waiver and to clarify
8 that a waiver may be available for the Commission to process a petition while the petitioner
9 concurrently seeks land use approvals. Also, to help Staff understand the petitioner's plans for
10 demonstrating land use compatibility, Idaho Power proposes revising the narrative requirements
11 in OAR 860-025-0030(2)(q) to require the petition to identify which section of the proposed land
12 use compatibility rule the petitioner is pursuing (Idaho Power's edits are shown below in red).

13 OAR 860-025-0030(2)(q): A narrative that identifies all land use approvals and
14 permits required for construction of the transmission line. This narrative must
15 include information on whether petitioner has submitted an application for each
16 approval or permit, the status of all such applications, and an explanation as to why
17 petitioner did not obtain any pending or outstanding approvals or permits before
18 submitting a petition under this rule as applicable including anticipated timelines
19 for issuance of any pending or outstanding approvals and permits, and the section
20 of OAR 860-025-0040 under which the petitioner seeks to demonstrate compliance
21 with that rule.
22

23 OAR 860-025-0030(3): At the time of filing, if the petitioner elects to demonstrate
24 compliance with OAR 860-025-0040 under section (2) or (4) of that rule and does
25 cannot include the necessary documentation to support a finding under OAR 860-
26 025-0040(2) or (4), the petitioner must submit a request for a waiver from the
27 application content requirements concurrent with the filing of the petition. The
28 petitioner will provide notice that the petition includes a request for waiver at the
29 time of filing. The waiver request must include:
30 (a) The specific part of the rule under OAR 860-025-0040 for which a waiver is
31 being sought;
32 (b) An explanation that clearly and comprehensively explains the need for the
33 waiver, including a narrative of why the required documentation cannot be obtained
34 or has not yet been obtained, along with any reliable evidence to support and verify

1 the petitioner's claim that such documentation cannot be obtained or has not yet
2 been obtained;

3 (c) In the event that the petitioner seeks a waiver for OAR 860-025-0040(2), the
4 petitioner shall explain whether the petitioner expects to obtain all land use
5 approvals and permits before the Commission makes its final decision on the
6 petition and is requesting that the Commission consider the petition concurrently
7 with those approval and permit processes; or whether the petitioner is requesting
8 that the Commission make its findings under OAR 860-025-0040(3).

9 . . .

10 **B. Idaho Power Supports the Proposal to Include a LUCS as an Additional Option for**
11 **Addressing the Commission's State Agency Coordination Requirements.**

12 Idaho Power supports revising the land use related provisions to allow petitioners to
13 demonstrate compliance with the Statewide Planning Goals and acknowledged land use plans by
14 filing a completed land use compatibility statement ("LUCS") from the affected jurisdictions. A
15 LUCS is a process that several agencies in Oregon have adopted to fulfill the state agency
16 coordination requirements pursuant to ORS 197.180 and ensure compliance with acknowledged
17 land use plans before issuing a permit affecting land use. For example, the Oregon Department of
18 Environmental Quality ("DEQ") requires an applicant to complete the LUCS process in relation
19 to 23 permits that DEQ issues.¹ In the DEQ process, an applicant must complete Section 1 of the
20 LUCS form, which describes the proposed use and identifies the DEQ approvals that the applicant
21 seeks. The applicant then sends the LUCS to each affected city or county planning official, who
22 in turn completes Section 2 of the LUCS to indicate whether the activity or use is compatible with
23 the acknowledged comprehensive plan and land use regulations, attaches written findings
24 supporting the decision of compatibility, and returns the signed and dated LUCS to the applicant.
25 Finally, the applicant then submits the completed LUCS to DEQ.

26 Idaho Power believes that the Commission could adopt a similar process to ensure
27 compliance with land use requirements in the CPCN context without requiring the Commission to

¹ See ODEQ LUCS Template at 2 (available at: <https://www.oregon.gov/deq/FilterDocs/lucs.pdf>).

1 make separate land use determinations or mandating that a petitioner obtain all land use approvals
2 before filing a petition. Specifically, the rules could require a petitioner to submit with its petition
3 a LUCS from each affected planning agency identifying that the project has either been permitted
4 at the local level or, if the petitioner has not obtained all land use approvals at the time of filing,
5 explaining that the proposed transmission line *could be* approved and identifying the local permits
6 that the petitioner will have to obtain.

7 Idaho Power supports the inclusion of the LUCS approach for two reasons. First, allowing
8 a petitioner to demonstrate compliance with land use planning requirements through a LUCS
9 would be consistent with the Commission’s past CPCN approvals, which allowed a petitioner to
10 demonstrate compliance with land use requirements by providing evidence that the transmission
11 line “can be approved by the local authorities if the petitioner follows the proper procedures.”²
12 Second, at the workshops on April 26, 2022 and June 3, 2022, local land use officials indicated
13 their familiarity with the LUCS process and voiced support for the inclusion of a similar
14 requirement in the CPCN proceedings.³

15 Additionally, based on discussions at the June 3, 2022 workshop, Idaho Power understands
16 that the Commission is considering whether a LUCS should be available in all circumstances, or
17 only where a petitioner cannot first obtain land use approval—for example, where a property
18 interest is a prerequisite to land use approval. Based on the discussions with the local land use

² *In re Umatilla Elec. Cooperative, Petition for Certification of Pub. Convenience and Necessity*, Docket PCN 1, Order No. 17-111 at 3 (Mar. 21, 2017).

³ *See, e.g.*, Special Public Meeting for Commissioners' Conversation with Oregon Department of Energy (ODOE) at 1:48:14–1:48:57 (Apr. 26, 2022) (statement of Robert Waldher) (“I would be in support of some sort of tool like [a LUCS]. It seems to work well with other state agencies where they have a LUCS process similar to like DEQ or the Oregon Watershed Enhancement Board, just a couple that we frequently see here at the county planning level. Basically what that LUCS form would include is an acknowledgment by the local planning officials that the project has either been approved or permitted at the local level, or it could be more provisional and state these are the permits that would be required at the local level and the local process that would be necessary.”) (available at: https://oregonpuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=941).

officials at the workshop, however, it is Idaho Power’s understanding that the agencies that rely on the LUCS do not differentiate between whether land use can or cannot be obtained, and instead use the LUCS as a matter of course. Idaho Power recommends that the Commission similarly apply the LUCS broadly.

C. Petitioners Should Be Able to Request that the Commission Make Independent Land Use Compatibility Findings for EFSC-Jurisdictional Projects.

Idaho Power appreciates that the rules contemplate that petitioners can rely on an EFSC site certificate to demonstrate land use compatibility under proposed OAR 860-025-0040(4). However, Idaho Power disagrees with the limitation on the Commission’s ability to act prior to issuance of a site certificate.

In the March 2022 Proposed Rules, the Commission revised OAR 860-025-0040(4) to state that “the Commission will not take final action until EFSC has issued a site certificate for the transmission line[.]” In the Company’s Initial Comments, Idaho Power voiced its concern that the proposed rules should provide the Commission with flexibility to issue a CPCN before a petitioner obtains a site certificate.⁴ To that end, Idaho Power believes that the current proposed OAR 860-025-0040(4) is unduly restrictive and should be revised. In earlier comments, Idaho Power proposed revising OAR 860-025-0040(4) to allow a petitioner for an EFSC-jurisdictional project to submit a petition for CPCN after EFSC issues its Draft Proposed Order for the project.⁵ Idaho Power continues to support this revision, which would ensure that a petitioner does not file a petition until after it has thoroughly analyzed its proposed route and the Oregon Department of Energy (“ODOE”) has issued its own analysis regarding compliance with land use standards,⁶ but

⁴ Idaho Power’s Initial Comments at 8 (Apr. 19, 2022).

⁵ Joint Utilities’ Informal Comments on Staff’s Proposed Rules at 12 (June 12, 2020).

⁶ See OAR 345-015-0210(2), (3) (requiring ODOE to include in the Draft Proposed Order either “the local government’s land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions” or “[ODOE’s] proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use

1 would still maintain the flexibility to allow a petitioner to seek a CPCN and site certificate
2 concurrently, if needed.

3 Finally, Idaho Power's request that the Commission reserve the flexibility to issue a CPCN
4 prior to a site certificate is consistent with the flexibility non-EFSC projects have to request that
5 the Commission make independent land use findings. Proposed OAR 860-025-0040(3) provides
6 that, if a petitioner has not obtained all land use approvals and permits from the relevant state and
7 local authorities, the Commission may make its own land use compatibility determinations.
8 Proposed OAR 860-025-0040(3) does not, however, provide the same flexibility to EFSC-
9 jurisdictional projects. Because EFSC is simply standing in the place of the relevant state and
10 local authorities, projects pursuing an EFSC site certificate should be treated the same as those
11 projects that go directly to the land use authorities for their permits and approvals. Therefore,
12 Idaho Power requests that the Commission consider the following changes to proposed
13 OAR 860-025-0040(3) and the related waiver provisions:

14 OAR 860-025-0030(3)(d): In the event that the petitioner seeks a waiver for OAR
15 860-025-0040(4), the petitioner ~~will provide information from the relevant,~~
16 ~~pending Energy Facilities Siting Council (EFSC) proceeding to demonstrate that~~
17 ~~EFSC approval is being sought request that the Commission make its findings~~
18 ~~under OAR 860-025-0040(3) shall explain whether the petitioner expects to obtain~~
19 ~~an Energy Facility Siting Council (EFSC) site certificate before the Commission~~
20 ~~makes its final decision on the petition and is requesting that the Commission~~
21 ~~consider the petition concurrently with the EFSC process; or whether the petitioner~~
22 ~~is requesting that the Commission make its findings under OAR 860-025-0040(3).~~

23 OAR 860-025-0040(3): In the event that the Commission cannot make findings
24 under section (2) or (4) of this rule for any of the reasons enumerated in OAR 660-
25 030-0065(3), the Commission may adopt goal compliance findings pursuant to
26 OAR 660-030-0065(3).

27 OAR 860-025-0040(4): If a proposed transmission line is subject to the jurisdiction
28 of the Energy Facility Siting Council (EFSC) and the petitioner has a site certificate

regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS
469.504(2)").

1 ~~at the time it files its petition, the Commission's will not take final action until~~
2 ~~EFSC has issued a site certificate for the transmission line land use findings~~
3 ~~assuring the proposed project's goal compliance and plan compatibility shall be~~
4 ~~based on the site certificate, and the requirements of OAR 860-025-0040(1), (2),~~
5 ~~and (3) shall not apply.~~

6 **D. The Commission's CPCN Process is Not an Appropriate Venue to Consider New**
7 **Routing Alternatives or Landowners' Siting Preferences.**

8 In this rulemaking docket, several commenters have shared a belief that potentially
9 impacted landowners must be allowed an opportunity in the CPCN proceedings to present their
10 concerns regarding a utility's proposed route and propose alternative routes. In other words, these
11 commenters suggest that in addition to the Commission's evaluation of the necessity of the
12 transmission line, the Commission should also evaluate the location of the transmission line, and
13 consider recommendations from landowners that the transmission line should be re-routed or that
14 portions of the route should be located on different parcels. However, in a recent CPCN order, the
15 Commission clarified that, when a petitioner identifies multiple potential alternatives to address a
16 transmission need, the Commission's "task is not to decide between" those identified alternatives,
17 but rather to weigh the alternatives when "decid[ing] whether the request to construct the
18 transmission line was necessary, safe, practicable, justified and in the public interest."⁷ For the
19 reasons discussed below, Idaho Power believes that the Commission should continue to limit the
20 analysis in the CPCN proceedings to an assessment of whether the petitioner's proposed
21 transmission line is needed. Importantly, the CPCN serves as proof only that the transmission line
22 "is a public use and necessary for public convenience."⁸

23 Given the narrow role of the CPCN and the fact that the utility must also obtain approvals
24 from land use and environmental permitting agencies, the hearings before those agencies will

⁷ *In re Tillamook People's Util. Dist., Petition for Certificate of Public Convenience and Necessity*, Docket PCN 2, Order No. 19-293 at 7 (Sept. 10, 2019).

⁸ ORS 758.015(2)

1 provide a more appropriate venue for challengers to raise issues relating to a utility’s proposed
2 route. Not only do those agencies have expertise in their fields, they also apply standards
3 specifically requiring a petitioner to consider various constraints when selecting a proposed
4 route—for example, in the EFSC context, historic and cultural resources,⁹ fish and wildlife
5 habitat,¹⁰ and important recreation opportunities,¹¹ among others. As a result, the land use and
6 environmental permitting approval hearings provide the venue for consideration of siting
7 constraints.¹² On the other hand, the Commission does not have any specific standards relating to
8 siting constraints, and to avoid duplication of regulatory proceedings, the Commission should
9 defer to the land use and environmental permitting agencies’ processes for assessing the adequacy
10 of proposed transmission line routes.

11 For example, in the EFSC process, an applicant must avoid siting a transmission line within
12 certain “protected areas,”¹³ and must also avoid impacting any fish and wildlife habitat that the
13 Oregon Department of Fish and Wildlife designates as Habitat Category 1.¹⁴ Similarly, other
14 impacts may be permissible so long as the site certificate includes mitigation measures ensuring
15 that the impacts will not be “significant.”¹⁵ Conversely, other factors may provide a siting
16 opportunity, such as a designated utility corridor within federal lands.¹⁶ When evaluating siting
17 options, the utility will seek to route a proposed transmission line in a manner that balances these

⁹ See, e.g., OAR 345-022-0090.

¹⁰ See, e.g., OAR 345-022-0060(1).

¹¹ See, e.g., OAR 345-022-0100.

¹² See OAR 345-020-0011(1)(d), (e) (requiring an applicant seeking a site certificate to identify in its Notice of Intent (1) “at least two proposed corridors”; (2) “an explanation of the basis for selecting the proposed corridors”; and (3) “all federal, state and local government permits related to” those corridors).

¹³ OAR 345-022-0040(1) (the avoidance requirement is also subject to certain exceptions).

¹⁴ OAR 345-022-0060(1) (requiring an applicant to demonstrate compliance with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6)); OAR 635-415-0025(1)(b)(B) (prohibiting authorization of any proposed development if impacts to Habitat Category 1 cannot be avoided).

¹⁵ See, e.g., OAR 345-022-0100(1) (requiring an applicant to demonstrate that “the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a *significant* adverse impact to important recreational opportunities in the analysis area as described in the project order”) (emphasis added).

¹⁶ For example, the Wallowa-Whitman National Forest has a designated utility corridor.

constraints and opportunities to result in a project that: (1) complies with the applicable standards; and (2) can be constructed in a reasonably direct route and at a reasonable cost. The utility then must demonstrate in the land use proceedings that the proposed route adequately assessed the identified constraints.

On the other hand, there may be instances when a landowner opposes a proposed route and asserts that the transmission line should instead be sited on another individual's land. In such a circumstance, the Commission lacks any clear standards to assess whether the utility has adequately analyzed and addressed the impacts of its proposed route. Moreover, the inquiry required for the CPCN does not require the Commission to balance competing environmental resource constraints or competing landowner preferences, so the Commission should instead continue to focus on the statutory purpose of a CPCN, which is to conclusively prove that a proposed transmission line "is a public use and necessary for public convenience."¹⁷ For this reason, the Commission should defer to the expertise of the state and local land use and environmental permitting agencies for determinations of whether a petitioner has adequately considered the various land use constraints and selected the most appropriate route.

E. Revision to the Commission's Consideration of Land Use Approvals Would Not Require Further Acknowledgment from LCDC.

At the April 26, 2022 workshop, a question was raised as to whether a change in the Commission's approach to land use in the CPCN process would require acknowledgement from LCDC. As discussed in greater detail below, based on Idaho Power's review of the state agency coordination requirements, it appears that no further approval from LCDC would be required provided that DLCD has an opportunity to review and comment on the revised rules, and moreover

¹⁷ ORS 758.015(2)

1 Idaho Power believes it would be appropriate for the Commission to reconsider whether the CPCN
2 is a decision affecting land use for purposes of state agency coordination.

3 As part of Oregon’s land use planning requirements, state agency actions must (1) comply
4 with the Statewide Planning Goals and rules that implement the goals;¹⁸ and (2) be “compatible
5 with acknowledged comprehensive plans and land use regulations.”¹⁹ To that end, LCDC certifies
6 “agency coordination programs” from each agency to assure that state agency rules and programs
7 affecting land use comply with those requirements.²⁰ Upon request of LCDC, each state agency
8 must submit a coordination program for review and approval.²¹ An approved coordination
9 program must include rules and procedures to assure that the agency’s land use programs comply
10 with the statewide planning goals and acknowledged comprehensive plans.²² If LCDC determines
11 that an agency’s coordination program is adequate, then LCDC issues an order certifying the
12 program.²³

13 Following certification, when a state agency seeks to amend its land use programs, the
14 certified agency must provide notice to DLCD to allow DLCD to review the proposed rules and
15 assure that the certified agency’s programs will continue to comply with the land use
16 requirements.²⁴ DLCD may file comments indicating whether the proposed revisions assure goal
17 compliance and comprehensive plan compatibility.²⁵ If a certified agency fails to give DLCD
18 notice of the proposed rulemaking, DLCD may require that the amended rule or program be
19 submitted for certification review in the same manner as the agency’s original coordination

¹⁸ ORS 197.180(1)(a).

¹⁹ ORS 197.180(1)(b).

²⁰ OAR 660-030-0000.

²¹ OAR 660-030-0045(1).

²² OAR 660-030-0065(1); OAR 660-030-0070(1).

²³ OAR 660-030-0055(2)(d).

²⁴ OAR 660-030-0075(1).

²⁵ OAR 660-030-0075(3)(b).

1 program.²⁶ However, if a certified agency gives DLCD timely notice of the proposed rulemaking
2 and DLCD provides no comments, the certified agency “may deem that [DLCD] finds the new or
3 amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30.”²⁷

4 LCDC approved the Commission’s agency coordination program in 1991.²⁸ In its certified
5 coordination program, the Commission identified the CPCN process as the only Commission
6 program affecting land use.²⁹ Because the Commission has concluded that issuing a CPCN would
7 affect land use, the Commission must provide DLCD notice of any amendments to its CPCN
8 program. Consistent with that requirement, the Commission included DLCD in the service list of
9 the Notice of Proposed Rulemaking for this docket. Because the Commission provided notice to
10 DLCD and DLCD has had an opportunity to comment on whether the proposed rules comply with
11 the requirements of ORS 197.180 and OAR chapter 660, division 30, the publication of final rules
12 in this docket will not require the Commission to seek further certification from LCDC.

13 Moreover, it is not entirely clear that a CPCN is, in fact, a program that would warrant
14 LCDC review in the first place. Although the Commission previously determined that a CPCN is
15 a program affecting land use and was therefore subject to LCDC acknowledgment,³⁰ Idaho Power
16 believes that the Commission should reconsider that decision.

17 LCDC requires all agencies to submit for its review “rules and summaries of state agency
18 plans and programs *affecting land use*[.]”³¹ which DLCD defined as any rules or programs that are
19 either:

²⁶ OAR 660-030-0075(6).

²⁷ OAR 660-030-0075(5).

²⁸ See <https://www.oregon.gov/lcd/About/Pages/State-Agency-Coordination.aspx> (listing LCDC-approved state agency coordination programs).

²⁹ PUBLIC UTILITY COMMISSION OF OREGON, *State Agency Coordination Program* at 21 (May 1991) (available at: https://www.oregon.gov/lcd/About/Documents/opuc_sac.pdf).

³⁰ *State Agency Coordination Program* at 14.

³¹ ORS 197.180(4)(a) (emphasis added).

- 1 (A) Specifically referenced in the statewide planning goals; or
2 (B) Reasonably expected to have significant effects on:
3 (i) Resources, objectives or areas identified in the statewide planning goals;
4 or
5 (ii) Present or future land uses identified in acknowledged comprehensive
6 plans.³²

7 No statewide planning goal specifically references a CPCN. Moreover, it is not clear that
8 the CPCN itself will affect any resources identified in the statewide planning goals—e.g.,
9 agricultural lands and forestlands—or land uses identified in comprehensive plans. Importantly,
10 the CPCN proves only that *the transmission line* is necessary and a public use. Although the
11 proposed transmission line may affect resources or land uses, the CPCN only grants condemnation
12 authority. Importantly, if a utility is able to obtain right-of-way easements without condemning
13 any property, no CPCN is required. Thus, it is not the CPCN that would result in the land use
14 impact. The Commission acknowledged in its LCDC-approved Agency Coordination Program
15 that “[a] CPCN does not authorize construction of the line.”³³ Although a CPCN may be necessary
16 in order to acquire land for a permitted use, the CPCN itself does not directly bear on the land use
17 permitting. For that reason, Idaho Power believes that the Commission should reconsider whether
18 a CPCN is a program affecting land use.

19 III. CONCLUSION

20 Idaho Power appreciates the Commission’s willingness to work with stakeholders and
21 coordinate with other agencies throughout these proceedings. Based on the presentations at the
22 April 26, 2022 hearing, it appears that the Commission intends to adopt a more flexible approach
23 that would allow a petitioner to seek land use approvals concurrently with the CPCN proceedings.
24 Idaho Power supports this approach. However, Idaho Power believes that the proposed rules

³² OAR 660-030-0005(2).

³³ *State Agency Coordination Program* at 14.

1 should be revised to further clarify the three options a petitioner may select and the requirements
2 for each option. To give the Commission further flexibility, Idaho Power proposes revising the
3 rules to allow the Commission to issue a CPCN without requiring a petitioner to first obtain a site
4 certificate. Finally, given the narrow focus of a CPCN, Idaho Power believes that the myriad siting
5 constraints that a petitioner must assess to obtain the necessary land use approvals would be better
6 addressed in the proceedings related to obtaining land use approvals. Idaho Power looks forward
7 to continuing engagement with the Commission in this rulemaking.

DATED this 22nd day of June, 2022.

Respectfully submitted,

MCDOWELL RACKNER GIBSON PC



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